

A v v M

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

June 7, 2011

Margaret L. Miller, Esq.  
Dow Lohnes PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036-6802

Re: UGARF Media Holdings, LLC  
WNEG-TV, Toccoa, Georgia  
FY 2010 Regulatory Fees  
Fee Control No. RROG-10-0013170

Dear Ms. Miller:

This further response to the request (Request)<sup>1</sup> for a reduction of the regulatory fee for fiscal year (FY) 2010, filed on behalf of UGARF Media Holdings, LLC, licensee of Station WNEG-TV, Toccoa, Georgia (the station) corrects the amount of the FY 2010 regulatory fee and penalty mentioned in our decision.<sup>2</sup> Our records reflect that the FY 2010 regulatory fee applicable to the station is \$3,050, and that it has not been paid. For the reasons set forth below, we restate that the Request is dismissed and the amounts are due for the FY 2010 regulatory fee and assessed penalty.

In the Request, counsel asserted that the regulatory fee for the station, which is included in the Greenville-Spartanburg-Asheville-Anderson Designated Market Area (DMA), should be reduced given that the station is located outside any metropolitan area within the DMA, does not provide a 41 dBu signal to a substantial portion of the DMA's metropolitan areas, and lacks a network affiliation.<sup>3</sup> Counsel contended that the regulatory fee should be assessed based on the number of television households the station serves, "which in this case would be at the level of a 'remaining market' station."<sup>4</sup>

Section 1.1166(d) of the Commission's rules, 47 C.F.R. §1.1166(d), provides that:

[p]etitions for reduction of a fee must be accompanied by the full fee payment and Form 159. . . . Petitions for reduction that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

<sup>1</sup> Letter from M. Scott Johnson, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209 to FCC (Aug. 31, 2010) (Request).

<sup>2</sup> Letter from Mark Stephens, Chief Financial Office, Office of Managing Director, FCC, to M. Scott Johnson, Esq., Fletcher, Heald & Hildreth, P.L.C. (Apr. 4, 2011) (We incorrectly stated the applicable FY 2010 regulatory fee was \$1,300; it should have been stated as \$3,050.)

<sup>3</sup> Request at 1.

<sup>4</sup> *Id.*, at 2.

The Request for a reduction of the FY 2010 regulatory fee for the station did not include the required FY 2010 regulatory fee and it did not include "a petition to defer payment due to financial hardship, supported by documentation of the financial hardship." Accordingly, under 47 C.F.R. §§ 1.1166(d) and 1.1164, we dismiss the Request and assess a twenty-five percent (25%) penalty<sup>5</sup> of the amount of the regulatory fee not paid in a timely manner.

It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. The Request does not indicate or substantiate that the station met this obligation. Therefore, payment of the balance of the FY 2010 regulatory fee of \$3,050.00 is due, plus the 25 percent late charge penalty of \$762.50, for a total of \$3,812.50. The regulatory fee and the late charge penalty should be submitted, together with a Form 159 (copy enclosed) within 30 days of the day of this letter.<sup>6</sup>

If you have any questions concerning this letter, please call the Revenue & Receivables Operations Group at 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', is written over a horizontal line.

Mark Stephens  
Chief Financial Officer

Enclosure

Copy to: M. Scott Johnson, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
11<sup>th</sup> Floor, 1300 North 17<sup>th</sup> Street  
Arlington, VA 22209

---

<sup>5</sup> 47 U.S.C. § 159(c).

<sup>6</sup> Failure to submit the full amount by the date specified may result in collection action under the Debt Collection Improvement Act of 1996 codified at 31 U.S.C. §3711, *et seq.*, and administrative procedures under our rules. See 47 C.F.R. §§ 1.1164(f)(f), 1.1901, *et seq.*

A

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

August 3, 2011

Mary N. O'Connor, Esq.  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW, Suite 700  
Washington, DC 20037

Re: Xanadoo, LLC, Debtor-in-Possession  
FY Application Fees (ULS File No. 0004789610)  
Filed July 6, 2011  
Fee Control No. RROG 10 00013521  
Regulatory Fee Amount: \$ 16,740.00

Dear Ms. O'Connor:

This letter responds to your request dated July 6, 2011 (*Request*)<sup>1</sup> on behalf of Xanadoo, LLC, Debtor-in-Possession (Xanadoo-DIP), for a waiver or deferral of application fees in the amount of \$16,749.00 on the grounds of financial hardship. Our records indicate that the application fees have not been paid; however, your *Request* petitioned for deferral.<sup>2</sup> For the reasons discussed below, we grant your *Request*.

You assert that on June 10, 2011, Xanadoo, LLC filed a voluntary petition for Chapter 11 Bankruptcy protection in the U.S. Bankruptcy Court for the District of Delaware,<sup>3</sup> and "[a]s a result . . . , applications are required to be filed with the Commission requesting consent to the *pro forma* involuntary assignment of various Commission-issued authorizations to [Xanadoo-DIP, which] seeks the waiver or deferral of application fees in the amount of \$16,740 . . . [for] 62 microwave stations" that provide broadband service in Texas, Oklahoma, and Illinois. You supplemented your *Request* with the FCC ULS File Number (0004789610) and a list of applications for assignment.<sup>4</sup> You assert that the waiver of the application fees would serve the public interest, and permit Xanadoo DIP "to conserve the limited resources it uses to provide wireless-broadband service to the public while also protecting the interests of its creditors."<sup>5</sup>

<sup>1</sup> Xanadoo, LLC, Debtor in Possession, Petition for Waiver or Deferral of Application Fees, (filed Jul. 6, 2011) (*Request*).

<sup>2</sup> 47 C.F.R. § 1.1166(c) (Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.).

<sup>3</sup> See *Request*, Exhibit 1 (Case Summary U.S. Bankruptcy Court, District of Delaware (Delaware), Bankruptcy Petition #: 11-11776-PJW (filed: Jun. 10, 2011); United States Bankruptcy Court, District of Delaware, Voluntary Petition in re Xanadoo, LLC, with exhibits, dated 6/10/2011.).

<sup>4</sup> Email from Mary O'Connor, Wilkinson Barker Knauer, LLP, 2300 N Street, NW, Suite 700, Washington, DC to Paul Cascio, FCC (Jul. 27, 2011).

<sup>5</sup> *Request* at 2-3.

Under 47 C.F.R. § 1.1119(a), which implements statutory waiver provisions,<sup>6</sup> we may waive an application fee in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest. We conduct a case-by-case review to determine the public interest even in bankruptcy cases.<sup>7</sup> In this case, we find that Xanadoo-DIP's bankruptcy establishes good cause for waiver of the filing fees,<sup>8</sup> and that our waiver of the fees will serve the public interest by enabling Xanadoo-DIP to preserve assets that will accrue to innocent creditors. Thus, under the circumstances of this case, your *Request* is granted.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written over a horizontal line.

Mark Stephens  
Chief Financial Officer

---

<sup>6</sup> 47 U.S.C. § 158(d)(2).

<sup>7</sup> Cf. Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15990, ¶ 13 (2003).

<sup>8</sup> Cf. Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 10 FCC Rcd 12759, 12762 (1995) (finding evidence of bankruptcy or receivership sufficient to establish financial hardship for purposes of waiver of regulatory fees).

WTS-13521

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

**RECEIVED**

JUL 15 2011

Financial Operations  
Center

Xanadoo, LLC, Debtor-In-Possession )

**RECEIVED - FCC**

JUL - 6 2011

To: Wireless Telecommunications Bureau

Federal Communications Commission  
Bureau / Office

**PETITION FOR WAIVER OR DEFERRAL OF  
APPLICATION FEES**

Pursuant to section 1.1119 of the Federal Communications Commission's ("Commission" or "FCC") Rules<sup>1</sup> and because it is currently the subject of Chapter 11 bankruptcy proceedings, Xanadoo, LLC, Debtor-In-Possession ("Xanadoo" or "Petitioner"), a wireless-internet provider, requests that the Commission grant a waiver or deferral of application fees. Under established Commission precedent, waiver or deferral of application fees in these circumstances would demonstrably serve the public interest.

**BACKGROUND**

Xanadoo, LLC, a Delaware company based in Bala Cynwyd, Pennsylvania, provides broadband data to cities in Texas, Oklahoma, and Illinois, for which purpose it holds many FCC licenses including 62 microwave stations. On June 10, 2011, Xanadoo, LLC, filed in the US Bankruptcy Court for the District of Delaware a voluntary petition for bankruptcy under Chapter 11 of the US Bankruptcy Code<sup>2</sup>; this petition is attached as Exhibit 1.

As a result of the bankruptcy, applications are required to be filed with the Commission requesting consent to the *pro forma* involuntary assignment of various Commission-issued

<sup>1</sup> 47 C.F.R. § 1.1119 (2010).

<sup>2</sup> 11 U.S.C. §§ 1101-74 (2006).

authorizations to Petitioner. Petitioner here seeks the waiver or deferral of application fees—in the amount of \$16,740—related to these assignments.

#### DISCUSSION

The Communications Act of 1934 as amended and the Commission's rules provide for the waiver or deferral of application fees "in any specific instance for good cause shown, where such action would promote the public interest."<sup>3</sup> The Commission has long recognized financial hardship as a basis for waiving application fees and, more particularly, has consistently ruled that "[e]vidence of bankruptcy" pursuant to Chapter 11 is per se "sufficient to establish financial hardship."<sup>4</sup> In the related context of regulatory fees, the Commission has referred to these standards as "bright line tests that can be administered predictably."<sup>5</sup> The Commission has thus regularly cited a company's bankruptcy as sufficient cause to waive or defer application fees.<sup>6</sup> Under the Commission's rules, application and regulatory fees are waivable in cases of bankruptcy in which, as here, the aggregate amount waived for a given fiscal year does not exceed \$500,000.<sup>7</sup>

Under the circumstances presented here, a waiver or deferral of the application fees at issue would serve the public interest. As demonstrated by its petition for bankruptcy, Petitioner

---

<sup>3</sup> 47 U.S.C. § 158(d)(2); *see also* 47 C.F.R. § 1.1119(a).

<sup>4</sup> Implementation of Section 9 of the Communications Act, *Memorandum Opinion and Order*, 10 FCC Rcd. 12759, 12762 (1994).

<sup>5</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd. 10301, 10310 (2009).

<sup>6</sup> *See, e.g., MobileMedia Corp., Memorandum Opinion and Order*, 14 FCC Rcd. 8017, 8027 (1999) ("We find that MobileMedia's bankruptcy establishes good cause for waiver of the filing fee.").

<sup>7</sup> *See* 47 C.F.R. § 1.1166(e); Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd. 15985, 15989-90 (2003).

is financially distressed. This financial hardship is particularly acute in light of the ongoing economic recession. By waiving or deferring payment of the application fees at issue, the Commission will enable Petitioners to conserve the limited financial resources it uses to provide wireless-broadband service to the public while also protecting the interests of its creditors. Moreover, the amount of fees at issue is well below the cap that applies to waiver requests of this sort under the Commission's rules.

#### CONCLUSION

For the foregoing reasons, the Commission should grant the requested waiver or deferral of application fees.

Respectfully submitted,

By:

  
Mary N. O'Connor

Wilkinson Barker Knauer, LLP  
2300 N Street, NW, Suite 700  
Washington, DC 20037  
202.783.4141

Its Attorneys

July 6, 2011